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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA – ATLANTA DIVISION**

FARKHONDEH MIRHOSSEINI)	Civil No.
and SEYED M. MIRHOSSEINI)	
)	PETITION FOR MANDAMUS
)	AND COMPLAINT FOR
)	DECLARATORY RELIEF
)	
PLAINTIFF)	Administrative Procedure Act
)	Case
)	
v.)	
)	
ANTONY BLINKEN in his official)	
capacity as U.S. Secretary of State,)	
U.S. Department of State;)	
MEGHAN GREGONIS, U.S.)	
Consulate General, U.S. Embassy)	
Abu Dhabi, United Arab Emirates,)	
U.S., Department of State)	
)	
)	
DEFENDANTS)	
)	

COMPLAINT

Plaintiffs allege as follows:

INTRODUCTION

1. This is a civil action brought pursuant to 28 U.S.C. § 1361 (the Mandamus

Act), 5 U.S.C. § 551, (the Administrative Procedures Act, "APA"), 5 U.S.C. § 704, 28 U.S.C. § 1331, 8 U.S.C. § 1329, and 28 U.S.C. § 1361 to redress the deprivation of rights, privileges and immunities secured to Plaintiffs to compel Defendants to perform a duty Defendants owe to Plaintiffs.

JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq., 5 U.S.C. § 704 and 28 U.S.C. § 1361 (the Mandamus Act).

VENUE

3. Venue in this district is proper under 28 U.S.C. § 1391(e)(1)(c) because the lead Plaintiff resides in Suwanee, GA (Gwinnet County) which lies within the jurisdiction of the U.S. District Court, Northern District of Georgia, Atlanta Division.

PARTIES

4. Lead Plaintiff Farkhondeh E. Mirhosseini, a U.S. citizen and current resident of Suwanee, GA, is the Petitioner of separate approved I-130 immigrant petitions filed on behalf of her parents Fatemeh Mirza Nasiri (Mother) and Co-Plaintiff Seyed M. Mirhosseini (Father).

5. Co-Plaintiff Seyed M. Mirhosseini is a citizen and resident of Iran. Co-Plaintiff Mirhosseini is the Beneficiary of a family based I-130 Immigrant Petition that was filed on his behalf by his U.S. citizen daughter on September 28, 2016 and approved on March 27, 2017.
6. Defendant Meghan Gregonis is sued in her official capacity as Consulate General of the U.S. Embassy – Abu Dhabi, United Arab Emirates. Consulate General Gregonis is responsible for overseeing the nonimmigrant and immigrant visa operations of the U.S. Embassy in Abu Dhabi, United Arab Emirates, including the processing of immigration benefits for eligible foreign nationals residing outside the U.S.
7. Defendant Antony Blinken is sued in his official capacity as Secretary of State. Secretary Blinken is responsible for overseeing the operations of the State Department, including the processing of immigration benefits for eligible foreign nationals residing outside the U.S.

STATUTORY BACKGROUND
BACKGROUND AND STATEMENT OF FACTS

8. Defendants have a mandatory duty to process and issue decisions on visa applications without unreasonable and undue delay.

Statutory and Regulatory Framework for Visa Adjudications

9. The Immigration and Nationality Act authorizes consular officers to issue immigrant visas and nonimmigrant visas to foreign nationals who are eligible for those visas and admissible to the United States. *See 8 U.S.C. § 1201; 22 C.F.R. § 42.71.*

10. One type of immigrant visa created by Congress is the family-based immigrant visa. *See 8 U.S.C. § 1153(a).* The family-based immigrant visa program is intended to provide immigration opportunities for certain qualifying relatives recognized under the Immigration and Nationality Act. To be eligible for the family-based Immigrant Visa, an applicant must be a Beneficiary of an approved Immigrant Visa Petition based on a qualifying familial relationship and must not be inadmissible under 8 U.S.C. § 1182(a). There is an annual immigrant visa quota under the family-based categories set out in 8 U.S.C. § 1153(a).

11. Each fiscal year, the State Department allocates immigrant visa numbers to be applied to approved immigrant visa petitions. The only category that is not subject to an annual quota is the “immediate relative” category, which comprises spouses of U.S. citizens, minor children of U.S. citizens and parents of U.S. citizens who are over 21 years old. The State Department’s National Visa Center (NVC) processes applications for immigrant visas for Immigrant

petitions where there exists an available immigrant visa number. The process requires immigrant visa applicants to submit certain documents through the Department of State National Visa Center's Consular Electronic Application Center (CEAC) system, after which the file is scheduled for a Consular Interview and transferred to the designated U.S. Consulate or Embassy. If an immigrant visa applicant satisfies the eligibility criteria and is not inadmissible under 8 U.S.C. § 1182(a), and if visas remain available, then consular officials must issue an immigrant visa. *See 8 U.S.C. § 1153(a)(1) (making the issuance of family-based visas mandatory for eligible qualified immigrants); 22 C.F.R. § 40.6 (visas may only be refused on “a ground specifically set out in the law or implementing regulations”).*

FACTS

12. On September 28, 2016, Lead Plaintiff Farkhondeh E. Mirhosseini filed separate I-130 Petitions with USCIS on behalf of her Mother (Fatemeh Mirza Nasiri) and co-plaintiff Seyed M. Mirhosseini (Father) under the immediate relative preference category. Both petitions were approved by USCIS on March 27, 2017. Both parent beneficiaries proceeded to file the requisite Immigrant Visa Applications and supporting documentation with the National Visa Center. Immigrant Visa Interviews were scheduled for both parents by

the U.S. Embassy Abu Dhabi, United Arab Emirates, on **December 6, 2017.**

See Exhibit A.

13.The Lead Plaintiff's Mother (Fatemeh Mirza Nasiri) attended her Immigrant Visa interview on December 6, 2017 and was approved for an Immigrant Visa Stamp (*via a waiver of Presidential Proclamation 9932*) on November 7, 2019. She was admitted to the U.S. as a Lawful Permanent Resident on **November 23, 2019** where she has resided ever since. *See Exhibit B.*

14.Lead Plaintiff Seyed M. Mirhosseini also attended his Immigrant Visa interview on December 6, 2017. However, his Immigrant Visa Application remains pending almost six years later under an *Administrative Processing* designation by the Consular Officer.

15.The Lead Plaintiff diligently initiated numerous impassioned inquiries with the U.S. Embassy Abu Dhabi – United Arab Emirates in the years since, all to no avail. *See Exhibit C.*

16.The Plaintiffs did not contemplate nor relish the prospect of filing legal action against the U.S. government, but the plain truth is that previous good faith attempts to resolve this issue administratively have constituted an exercise in futility.

17.Plaintiffs respectfully contend that the filing of this Mandamus claim does not

constitute an attempt to “skip the line” ahead of other applicants. The facts show that separate family based permanent residency cases were initiated at the same time for the parents of a U.S. citizen in 2016. In September 2023, only one of those parents has received a decision on their case. For almost six years the Co-Plaintiff has been separated from his spouse and daughter, while being met with generic “Your case is under administrative processing...” responses to inquiries with the U.S. Embassy charged with processing his case.

CLAIMS

18. Defendants willfully and unreasonably have delayed the processing of the Immigrant Visa Application for Co-Plaintiff Seyed M. Mirhosseini.

19. Defendants are charged by law with a non-discretionary and statutory obligation to adjudicate the Co-Plaintiff’s Immigrant Visa Application and have failed to perform that duty in a reasonable manner. The U.S. Embassy Abu Dhabi – United Arab Emirates has had more than an ample opportunity (i.e., 3 months shy of six years) to sufficiently investigate and resolve any concerns that led to an administrative processing designation for the Co-Plaintiff’s Immigrant Visa Application. The fact that his application remains

pending just shy of six years later should not be deemed “reasonable” by the Federal Judiciary.

20. Plaintiff submits that any efforts at an administrative resolution would be an utter exercise in futility.

WHEREFORE, Plaintiffs pray that the Court:

1. Compel Defendants and those acting under them to perform their duty to adjudicate the Immigrant Visa Application for the Co-Plaintiff;
2. Grant such other and further relief as this Court deems proper under the circumstances; and
3. Grant Attorney’s fees and costs of Court to Plaintiff under the Equal Access to Justice Act (EAJA).
4. Award such further relief as the Court deems necessary or proper.

DATED this 1st day of September, 2023.

LEVINE & ESKANDARI, LLC

/s/ Kenneth S. Levine

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CERTIFICATE OF SERVICE

I hereby certify that the forgoing PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY RELIEF was served by Certified Mail, Postage Pre-Paid on this 1st day of September, 2023.

Antony Blinken, Secretary, U.S. Department of State
The Executive Office of the Legal Advisor
Suite 5.600
600 19th NW
Washington, DC 20522

Megan Gregonis, U.S. Consulate General
U.S. Embassy Abu Dhabi, United Arab Emirates
U.S. Department of State
C/O Executive Office, Office of the Legal Advisor
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600 19th St. NW
Washington, DC 20530

Ryan K. Buchanan, U.S. Attorney
Civil Process Clerk
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U.S Department of Justice
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